

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:

HORNACK, Janmarie, et al.

Docket No. 30900-CTN

Serial No. :

Group Art Unit No. \_\_\_\_\_

Filed:

DIETARY SUPPLEMENT CONTAINING  
ALKALINE ELECTROLYTE BUFFERS

Examiner: \_\_\_\_\_

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

DECLARATION OF

1. I, MICHAEL KESSLER, am a resident of 4045 Sheridan Ave., Ste., 363  
MIAMI, FLORIDA.
2. Attached hereto as Exhibit A is a copy of my (resume) or (*curriculum vitae*).
3. I have been advised that Janmarie Hornack, Overland Park, Kansas and Lawrence E. Dorman, Grain Valley, Missouri, the named co-inventors of the above patent application, filed an application Serial No. 09/706-05 under the above title, with this application being a continuation of the '706 application.
4. I have been further advised that the above referenced continuation application describes improved dietary or therapeutic supplements in which a solid dietary and/or therapeutic supplement agent having a pH of 6 or less and chosen from vitamins, bioflavonoids, minerals, trace minerals, whole plant food products containing phytonutrients, herbs and mixtures thereof, is combined with a sufficient amount of an electrolyte additive selected from the group of calcium, magnesium and potassium alkaline electrolytes, to increase

**EXHIBIT**D  
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the pH of the combined ingredients to a pH of from about 8 to about 12.5, which increases the bioavailability and effectiveness of the agent in the person's stomach.

5. I have reviewed the Declaration of Janmarie Hornack dated August 6, 2002, and attachments Exhibits A and B to her Declaration. Ms. Hornack in her notebook entry reports adding a sufficient amount of a magnesium, calcium and/or potassium electrolyte to seven bioavailable nutrients, each of which had a pH below 6, thereby increasing the pH of the combination to at least 8.
6. It is my understanding from Ms. Hornack's Declaration the inventors discovered that by adding a selected electrolyte to acidic solid dietary and/or therapeutic supplement agents having a pH of 6 or less to increase the pH of the combination to a level such that the pH of the supplement is at an ideal pH of about 8 to about 12.5, two synergistic phenomena occur. As a consequence, the agent in the composition is more absorbable and more rapidly and efficiently digested in the cardio fundic portion of the individual's stomach. The majority of the agent is digested within a shorter time with less pH fluctuation caused by the composition ingested than would otherwise be the case, if the agent remained acidic. Furthermore, incorporation of a critical amount of the electrolyte factors in the composition provides for an improved intracellular/extracellular transfer rate of the dietary and/or therapeutic supplement agent, contributing to the increased bioavailability and effectiveness of the supplement agent.
7. I have given consideration to the subject matter of claim 1 of the Hornack/Dorman continuation application, which I understand reads as follows:

An improved dietary and/or therapeutic supplement composition consisting essentially of, in combination:

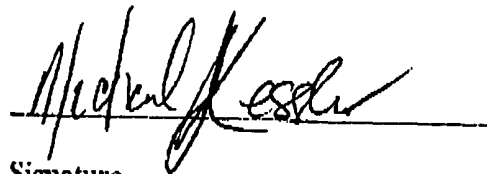
a solid dietary and/or therapeutic supplement agent selected from the group consisting of water soluble vitamins, bioflavonoids, minerals, trace minerals, whole plant food products containing phytonutrients, herbs, and mixtures of the foregoing that are known to promote health and well being and each having a pH of 6 or less which upon ingestion with food or a beverage would limit the availability of the agent to the person ingesting the agent; and

an electrolyte additive selected from the group consisting of calcium, magnesium and potassium alkaline electrolytes, a sufficient amount of the alkaline additive being provided in combination with the agent to raise the pH of the combination to a level of from about 8 to about 12.5 and enough electrolytes to improve bioavailability at cellular levels upon ingestion of the supplement composition thereby increasing the effectiveness and utilization of the agent in the person's body.

8. I am of the opinion it would be obvious to one skilled in this art from a review of the Hornack notebook entry, Exhibit B to the Hornack Declaration, that the same improved results would be obtained with obvious variations and adaptations of the specific dietary and/or therapeutic supplement agents recorded by Ms. Hornack in Exhibit B of her declaration, such as the acidic water soluble vitamins, bioflavonoids, minerals, phytonutrients and herbs recited in the claim language of paragraph 7 above.

9. I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful, false

statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code.

  
Signature

## BIOGRAPHY – MICHAEL JON KESSLER

4045 Sheridan Avenue, Suite 363,  
Miami Beach, FL 33140  
Voice: 305 861 3355  
Fax: 305 861 3366  
Email: kesslerassoc@the-beach.net

Kessler's impressive credentials include over 25 years collective experience in clinical research, executive level marketing, management, merchandising, retail site development, brand management, public relations, product and store development, regional management, etc.

Having began his professional career at the young age of 18, Kessler's talents and entrepreneurial drive became apparent as he eclipsed his peers and, by the mere age of 24, opened a chain of highly successful shopping-mall toy stores (Toy Bus), seasonal shops (Holiday Pines), and cut-flowers, plants, and giftware specialty stores (Sunflower Farms).

By age 25, Kessler was recruited by then President of General Nutrition Centers (GNC), Gary Daum, and within eight short months became the youngest Regional Manager in GNC's history. By age 28, Kessler headed GNC's corporate marketing and research division, and under his direction, opened GNC's first 20,000 square foot Oakland Park, Florida health food supermarket, where he introduced the Westbrae and Kappus soaps lines, and was further responsible for the acquisition of NHN stores. Kessler later accepted the position of Vice-President of Marketing for Diet Centers, Inc., the then largest diet franchise in the world, with over 2,500 centers, which were subsequently acquired by GNC.

It was at this point in Kessler's career that he began to develop insights regarding sales and marketing of nutraceuticals ( a term he used long before its common usage today) that became an instinctive aspect of his ability to excel and stay "ahead of the curve" in the industry. On the topic of "branding," Kessler remarked that in 1984/1985 the sharp downswing in the industry was caused by a "consumer information glut" (i.e., consumers were bombarded with not only confusing, but also conflicting information), thus consumers simply walked-away. Similar phenomena began in 1998 in the way of a "product glut." For example, if a consumer wanted to address the issue of depression, should they purchase St. John's Wort, St. John's Wort with Kava, St. John's with Vitamin-C, St. John's Wort with Echinacea, or some other derivative? Again confused, the consumer has walked-away.

"Our direction was not be to simply introduce a variety of 'extensions', but rather, a brand consisting of two-to-three SKUs, where each brand will be comprised of a clinically proven, patented, proprietary core-product," said Kessler. "Thus, answering consumers' current concerns about manufacturing standards, raw materials, quality and consistency which, in turn, impacts consumer perception of the brand."

By age 33, Kessler had assumed Vice-Presidency positions at both American Health Diet Corporation in New York, and later with GNC's former President at America's Nutrition Works in Pittsburgh. It was now in his career that he recognized that clinically researched dietary supplements held the key to success in the nutritional products industry and launched yet another successful entrepreneurial venture, Enerday USA, which specialized in the clinical research of diet and fitness formulas, pain relief, immune systems, etc.

Kessler recently served as a consultant and Executive Vice President for Omni Nutraceuticals, Inc. in Los Angeles, CA from 1999 to 2001, while he continued the operation of NuPharma Companies in Miami, FL. During his tenure, he was instrumental in changing the companies focus from lower-end commodity dietary supplements to nutraceuticals, which comprised a core group of \$3-5 million dollar brands formulated to address the ten top consumer health concerns. The company realized its single highest revenue during the quarter of \$15 Million immediately prior to Kessler's resignation. Kessler resigned Omni Nutraceuticals, Inc. to re-focus his efforts and develop Kessler & Associates, LLC in Miami, Florida.

Kessler's objective is to position his organizations as leaders in the industry developing proprietary, patented, clinically proven products with viable action mechanisms for which we can secure published, peer-reviewed research to complement our advertising efforts with editorial coverage and publishing.

From Kessler's perspective there are too many companies offering extensive assortments of products that serve no purpose other than marketing. "I believe the industry is maturing and subsequently, the wide assortments of "me-too" products will give way to proprietary national brands with specific formulas based upon raw materials that are controlled exclusively by those brands. These narrow assortment brands will enjoy a longer shelf life, generate above average revenue and support higher marketing spends due to the supplier's control of raw material availability preventing competitors from entering the marketplace. The clinical credibility of these brands and the reciprocal consumer loyalty will insulate these brands from the radical fluctuations in the marketplace that up until this time have wrecked havoc with the dietary supplement industry every ten years or so." (See The Consumer Gap In Dietary Supplements, Kessler, Expose Magazine, May 2001)

Kessler currently owns and operates Kessler & Associates, LLC a market-consulting firm with a full compliment of clinical research and development, media procurement, graphic design, public and professional relations, contract manufacturing, and sales representation spanning all channels of distribution. Current accounts range from Consac Industries (Country Life, BioChem, Desert Essence, Vitamin Solutions), Nx Nutraceuticals, LLC, Cholesterin, LLC, Warner Laboratories, Inc., Quick Test 5, Inc., Clinical Results, Inc., Thane International, Inc., and VitaSpan, LLC.

Kessler & Associates operates a west coast marketing division in Los Angeles, CA headed by Ed Haisha. Ed Haisha was responsible for the publicity, book publication and the breaking pr that introduced St. Johns Wort to the USA consumer. The organization operates with exclusive sales representation by Russ Todd Associates and The Hynes Company to name a few.

In addition, Kessler has entered into joint venture and product development agreements with Rapid Development Systems, Inc., Krave Strips, LLC., Protein Only Ice Cream, LLC., and Algonot Enterprises, Inc. Kessler also owns and operates NuPharma Companies, LLC., a retail product development and direct response organization responsible for limited retail and professional distribution of Beres Drops Plus Immune formulas, Esterin, USA, AppeSlim/DiaSlim Diet, Natural Bladder, and Propax Immune Stimulant. Kessler owns and operates NutraSpan, LLC a firm devoted to the development of oral strip technology located in Miami, Florida. NutraSpan, LLC is also a joint venture partner with Edible Film Technologies, Inc. also located in Miami, FL. Kessler's business organizations have been in operation ranging from eight years to over ten.